1. S.B.CIVIL WRIT PETITION NO. 6801/2007.
(Taslim Ahmed Kadari Vs. State of Rajasthan & Ors.)

2. S.B.CIVIL WRIT PETITION NO. 6819/2007.
(Rajendra Kumar Marvah Vs. State of Rajasthan & Ors.)

3. S.B.CIVIL WRIT PETITION NO. 6820/2007.
(Ayaz Ahmed Vs. State of Rajasthan & Ors.)

4. S.B.CIVIL WRIT PETITION NO. 6821/2007.
(Navratan Goyal Vs. State of Rajasthan & Ors.)

5. S.B.CIVIL WRIT PETITION NO. 6822/2007.
(Narendra Kumar Sharma Vs. State of Raj. & Ors.)

6. S.B.CIVIL WRIT PETITION NO. 6823/2007.
(Prem Kumari Sewag Vs. State of Rajasthan & Ors.)

7. S.B.CIVIL WRIT PETITION NO. 6831/2007.
(Seema Gupta Vs. State of Rajasthan & Ors.)

Date of order :: 30th October 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Bharat Devasi, for the petitioners.

…

BY THE COURT:

Civil Writ Petitions Nos. 6801/2007, 6819/2007, 6820/2007, 6821/2007, 6822/2007, 6823/2007, and 6831/2007 preferred against the transfer order in relation to each of the petitioner, proceeding essentially on common ground questioning the competence of the State Government to make such an order, though some of the petitioners have also pressed upon their individual but similar nature grounds, are taken up for disposal by this common order, more

particularly for the reason that this Court is not inclined to entertain the matters in extra-ordinary writ jurisdiction because of availability of alternative remedy.

The petitioners, working on the post of teacher have been ordered to be transferred from one Panchayat Samiti to another Panchayat Samiti by the impugned transfer orders issued by the State Government in its Panchayati Raj Department. The petitioners seek to question the transfer order essentially on the ground, as vehemently argued by the learned counsel, that the impugned order made by the State Government is without jurisdiction and is in violation of Rule 289 and Rule 336 (26) of the Rajasthan Panchayati Raj Rules, 1996 (‘the Rules of 1996); that under the scheme of the Rules of 1996, the name of the employee desiring transfer or desired to be transferred within the District is to be communicated to District Establishment Committee by the Panchayat Samiti and no such communication has been made by the Panchayat Samiti the petitioner is working with; that the Chief Executive Officer of Zila Parishad is the only competent authority to effect such transfers and the order issued by the Deputy Secretary to the Government is without jurisdiction. In each of these petitions, the petitioners have also impleaded private respondent No. 4 and have asserted that the transfer order has been made only in order to accommodate the said

respondent No. 4. In CWP No. 6820/2007 it has further been urged that the wife of the petitioner is serving in the same Panchayat Samiti and, therefore, transfer of the petitioner is against the policy of the Government. Likwise, in CWP No. 6831/2007 it has been urged that the husband of the petitioner is a handicapped person and is serving in the same Panchayat Samiti and, therefore, transfer of the petitioner is against the policy of the Government. In relation to the case of petitioner in CWP No. 6822/2007 it has further been argued that the petitioner is subjected to frequent transfers. Upon this Court expressing its reservations for entertaining these matter directly in extra-ordinary writ jurisdiction particularly when the petitioners have available the alternative remedy of appeal before the Service Appellate Tribunal, learned counsel submitted that alternative remedy is not a rule of law but is only a self-imposed restriction, and is not of bar unless there are involved some disputed questions of fact. Learned counsel submitted that when condition precedent for exercise of a jurisdiction are not fulfilled, such exercise of jurisdiction being wholly unauthorized, could be interfered with in writ jurisdiction. Learned Counsel has referred to and relied upon the decisions of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd. Vs. Income-tax Officer & Anr. : AIR 1961 SC 372; Maharashtra State Judicial Services Assn. & Ors. Vs.

High Court of Judicature at Bombay & Ors. : (2002) 3 SCC 244; T.N. State Transport Corporation Vs. Neethivilangan, Kumbakonam : (2001) 9 SCC 99.

Having given a thoughtful consideration to the matter, this Court is unable to agree with the submissions made by the learned counsel; and this Court is of the view that there is no reason wherefor the petitioners be permitted to question their transfer orders by way of writ petitions while ignoring the specific alternative remedy of appeal before the Rajasthan Civil Services Appellate Tribunal.

The submissions in relation to the operation of the statute as suggested on behalf of the petitioners do not prima facie appear to be making out a case of absolute want of power and authority with the State Government and the case of the petitioners cannot be treated at par with the petitions decided or pending consideration before this Court where prima facie the very power of the Government in its Panchayati Raj Department to make the order of transfer in relation to the employee concerned appeared to be questionable, like the matters where the Government has proceeded to make the orders transferring the employees within the same Panchayat Samiti.

Rules 289 and 290 of the Rules of 1996 read as under:-

> "**Rule 289. Transfer within the district.**-(1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the district Establishment Committee by the Panchayat Samiti.
>
> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the district Establishment Committee.
>
> (3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari as the case may be, shall carry out orders of the State Government.
>
> (4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.
>
> **Rule 290. Transfer outside the district.**- (1) The name of the employee desiring transfer or desired to be transferred from one district to another shall be communicated to the Director by the Panchayat Samiti or the Zila Parishad, as the case may be.
>
> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendation of the State Government against the vacant posts existing at such time. The State Government may transfer any member of service from one Panchayat Samiti to another Panchayat Samiti within the same district or outside it, from one Zila Parishad to

> another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under these rules. Chief Executive Officer or Vikas Adhikari concerned shall carry out such orders.
>
> (3) On transfer of an employee, his confidential roll and service record will be transmitted without avoidable delay to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."
>
> (underlining supplied for emphasis)

Sub-section (8-A) of Section 89 of the Rajasthan Panchayati Raj Act, 1994 ('the Act of 1994') reads as under:-

> "Notwithstanding anything contained in Sub-sec. (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under Sub-sec. (8), or the rules thereunder:"

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994 prima facie makes out that it is within the competence of the State Government to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside

the District. The order relating to the petitioner does not prima facie suffer from any want of authority nor appears to have been issued in violation of any statutory condition or requirement. Similarly, other grounds sought to be urged in each individual case, whether relating to accommodation of respondent No. 4, or relating to the policy of Government are not suggestive of any want of authority or violation of statutory condition.

Having regard to the facts and circumstances of these writ petitions, this Court is satisfied that there is no reason wherefor the petitioners be permitted to by-pass the alternative remedy of appeal so as to maintain directly a petition for writ to this Court. The decisions sought to be relied upon by the learned counsel on the aspect of alternative remedy are of little help for the petitioners. In the case of Calcutta Discount (supra), the Hon'ble Supreme Court has observed that existence of alternative remedy is not always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing with such action. The Hon'ble Supreme Court has not laid down that whenever a question of want of jurisdiction is raised, the alternative remedy is always to be ignored. The observations of the Hon'ble Supreme Court in Maharashtra State Judicial Service Association's case (supra) rejecting the

objection of alternative remedy in relation to a petition under Article 32 of the Constitution of India before it where the petition had already been entertained by issuing rule and where the parties have placed their respective stand before the Court on the question of interpretation of the rules has obviously no application to the question at hands. The observations in T.N. State Transport Corporation (supra) made in the context of the right of a workman after the employer's application for approval of the order for his dismissal from service was refused by the Tribunal, that if the employer refuses to grant the benefits to the employee, the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution too have no bearing on the subject matter of the present petitions. Learned counsel has rightly submitted that the aspect of alternative remedy is a self-imposed restriction by the writ courts; and this Court is clearly of opinion that such self-imposed restriction is meant for adherence rather than avoidance. In the cases of the present nature where statutory alternative remedy is available, unless the matter appears to be prima facie giving rise to direct questions on violation of statutory requirement or making out a clear case of mala fide, this Court is of opinion that ordinarily the employee cannot be permitted to by-pass the alternative remedy so as to maintain directly a writ petition. This Court is

clearly of opinion that there is no special reason or circumstance for which the petitioners be permitted to by-pass such statutory remedy and to directly maintain the petitions for writ.

It appears appropriate to clarify that the provisions of the Act of 1994 and the Rules of 1996 have been referred hereinbefore only to notice that the present one are not the cases where prima facie the transfer orders could be said to be wholly unauthorized; and else, for being not inclined to entertain the matters in extra-ordinary writ jurisdiction because of availability of alternative remedy of appeal before the Tribunal, this Court would not make final comment on the merits of the grounds sought to be urged by the petitioner.

Exercise of writ jurisdiction in these matters is refused; and the petitions are rejected.

MK **(DINESH MAHESHWARI), J.**